

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, SINGLE BENCH
NEW DELHI

Company Petition No.16/103/ (ND)/2017

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

SECTION 441 OF THE COMPANIES ACT, 2013 (SECTION 621A OF THE COMPANIES ACT, 1956) FOR VIOLATION OF SECTION 285 OF THE COMPANIES ACT, 1956 AND SECTION 173 OF THE COMPANIES ACT, 2013.

AMONGST

PAHUJA TAKII SEED LIMITED (Applicant No.1)
HAVING REGISTERED OFFICE AT:
D-246, STREET NO.10, BALAJI CHAMBERS, OFFICE NO.303
LAXMI NAGAR, New Delhi-110092

MR. OSAMU SUGIMURA (Applicant No.2)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. TAKESHI SUGIMURA
R/O 794, KIDERA-CHO, NARA, JAPAN

MR. MASAKI KASHIWAGI (Applicant No.3)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. MITUSUTERU KASHIWAGI
R/O 564-9, KITAMACHI, NISHIURA-KAMINOSHIMODACHURI
OMMAE-DORI, KAMIGYO, KYOTO, JAPAN

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MR. KAZUO HATSUDA (Applicant No.4)
ERSTWHILE DIRECTOR OF APPLICANT NO.1
S/O MR. SAICHIRO HATSUDA
R/o 1-1-53-505, TOHEI, CHUO-KU, OSAKA, JAPAN

..... APPLICANTS

AND

Registrar of Companies
NCT of Delhi & Haryana
4th floor, IFCI Tower,
Nehru Place
New Delhi-110019.

.....RESPONDENT

ADVOCATE FOR THE PETITIONERS: Mr. Cicu Mukhopadhyay, Senior Advocate
Mr. Anirudh Das, Advocate
Mr. Aditya Mukherjee, Advocate

:

OK

ORDER

ORDER DELIVERED ON: 18.08.2017.

1. In relation to the offence arising out of non-convening of the Board Meetings during the last quarter 2011-12 and 2012-13, the Petitioners above named have filed the above Petition for compounding the offence under Section 285/ 629A of the erstwhile Companies Act, 1956, with the Registrar of Companies, NCT of Delhi & Haryana and the same has been put up before us as required under the provisions of Companies Act 1956/ 2013 for compounding the offence.
2. The Petitioner claims that the delay in holding the Board meeting during the last quarter were inter-alia caused by the then subsisting dispute between the shareholders interse of the 1st Applicant, the delay in the valuation exercise, the delays with respect to consequent transfer of shares to Takii on account of the requirement of RBI approval and related compliances, the change in management of the Applicant Company and subsequent corporate actions required to be undertaken by the new management of the Applicant company. It is further pleaded in the Petition that the violation committed for not convening the Board meetings is not willful and that in the circumstances as they have



voluntarily reported the non-compliance on their own, the same may be duly considered while taking into consideration the imposition of fine, as prescribed under the relevant provisions of the Companies Act be it 1956 or 2013. It is also averred that subsequent to the resolution of disputes between shareholders interse and acquisition of shares, The Board Meeting was able to be held only on 12.08.2015 and subsequently on 17.12.2016 and ~~on~~ that they have put an end to the offence by convening the Board meetings for the relevant years as tabulated in the Petition and which is extracted below:

Financial Year	Last date on which Board Meeting required to be held
01.01.2011 to 31.12.2011	Every quarter of 2011
01.01.2012 to 31.12.2012	Every quarter of 2012

3. The Registrar of Companies has filed a detailed report and a perusal of which shows that no prosecution in relation to the offence has been filed or launched and that similar offence has also not been compounded during the last 3 years. It is further reported that the default has been made good as per details furnished by RoC which is in accordance with the compilation, as extracted in paragraph 2 above. Further, it is also represented by the RoC in the report dated 01.06.2017

that no complaint has been received against the Company and that there is no inspection or investigation proceedings pending against the Company.

4. The plea made by the Petitioner in the above Company Petition and the documents annexed therewith and the report of the RoC have been taken into consideration. Further, in passing this order, this Tribunal is also guided by the judgements of the Hon'ble NCLAT passed in relation to imposing of fine and compounding of an offence in which it has been laid that the following factors are required to be considered:

- i) The gravity of offence.
- ii) The act is intentional or unintentional.
- iii) The maximum punishment prescribed for such offence, such as fine or imprisonment or both fine and imprisonment.
- iv) The report of the Registrar of Companies.
- v) The period of default.
- vi) Whether petition for compounding is suo-moto before or after notice from, Registrar of Companies or after imposition of the punishment or during the pendency of a proceeding.
- vii) The defaulter has made good of the default.
- viii) Financial condition of the company and other defaulters.
- ix) Offence is continuous or one-time.
- x) Similar offence earlier committed or not.

- xi) The act of defaulters is prejudicial to the interest of the member(s) or company or public interest or not.
- xii) Share value of the company, etc.

5. Applying the above yardstick it is seen that the Petitioner Company is a Public Limited Company. The plea of the Petitioners in the Petition that in view of the pre-existing dispute for the relevant years for which they have not been able to comply may not be a valid ground under law for their exoneration, but however is a mitigating factor in relation to determining the quantum of fine. Further the existing financial position of Petitioner Company seems to be also not on a sound footing. Moreover, it is also seen that defaulter has made good the default on its own. Further both under the provisions of Companies Act, 1956 as well as under the 2013 Act, the punishment for default in complying with the relevant provisions requiring to convene Board meeting is attendant only with fine as reproduced below:

"629A Penalty where no specific penalty is provided elsewhere in the Act- If a Company or any other person contravenes any provision of this Act for which no punishment- is provided elsewhere in this Act or any condition, limitation or restriction subject to which any



approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues."

6. However, the non-compliance with the non-holding of Board meeting is for a continuous period of two years.

7. Hence, in the circumstances of the case, this Tribunal is of the view that it will be fit and proper to impose the following fine on the defaulters for calendar years 01.01.2011 to 31.12.2012, thus aggregating in all to Rs. 3,12,000/- . The details of which is given as follows:



Name of the Applicants	No of days delay and fine imposed per day of offence	Amount (RS) (01.01.2011 to 31.12.2012)	Fixed fine u/s 629A	Total
		2011-2012, 2012-2013		
PAHUJA TAKII SEED LIMITED	730x100	73000	5000	78000
MR.OSAMU SUGIMURA	730x100	73000	5000	78000
MR. MASAKI KASHIWAGI	730x100	73000	5000	78000
MR. KAZUO HATSUDA	730x100	73000	5000	78000
		2,92,000	20,000	3,12,000



8. Subject to the remittance of the aforesaid fine, the offence shall stand compounded. For compliance within three weeks. Fine levied on the Directors shall be paid out of their personal accounts.

Petition stands disposed off in terms of the above.

 5d/- || 18-08-17
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.MEHTA